

## § 1503.645

(a) The ALJ may order that any other information contained in the record be withheld from public disclosure. Any person may object to disclosure of information in the record by filing a written motion to withhold specific information with the ALJ and serving a copy of the motion on each party. The party must state the specific grounds for nondisclosure in the motion.

(b) The ALJ must grant the motion to withhold information in the record if, based on the motion and any response to the motion, the ALJ determines that disclosure would be detrimental to transportation safety, disclosure would not be in the public interest, or that the information is not otherwise required to be made available to the public.

### § 1503.645 Expert or opinion witnesses.

An employee of the agency may not be called as an expert or opinion witness, for any party other than TSA, in any proceeding governed by this subpart. An employee of a respondent may not be called by an agency attorney as an expert or opinion witness for TSA in any proceeding governed by this subpart to which the respondent is a party.

### § 1503.647 Subpoenas.

(a) *Request for subpoena.* A party may obtain a subpoena to compel the attendance of a witness at a deposition or hearing, or to require the production of documents or tangible items, from the ALJ who is assigned to the case, or, if no ALJ is assigned or the assigned law judge is unavailable, from the chief ALJ. The party must complete the subpoena, stating the title of the action and the date and time for the witness' attendance or production of documents or items. The party who obtained the subpoena must serve the subpoena on the witness or the custodian of the documents or tangible items sought to be produced.

(b) *Motion to quash or modify the subpoena.* A party, or any person upon whom a subpoena has been served, may file a motion to quash or modify the subpoena at or before the time specified in the subpoena for compliance. The applicant must describe, in detail,

## 49 CFR Ch. XII (10–1–10 Edition)

the basis for the application to quash or modify the subpoena including, but not limited to, a statement that the testimony, document, or tangible evidence is not relevant to the proceeding, that the subpoena is not reasonably tailored to the scope of the proceeding, or that the subpoena is unreasonable and oppressive. A motion to quash or modify the subpoena will stay the effect of the subpoena pending a decision by the ALJ on the motion.

(c) *Enforcement of subpoena.* Upon a showing that a person has failed or refused to comply with a subpoena, a party may apply to the U.S. district court having jurisdiction to seek judicial enforcement of the subpoena in accordance with 49 U.S.C. 46104.

### § 1503.649 Witness fees.

(a) *General.* Unless otherwise authorized by the ALJ, the party who applies for a subpoena to compel the attendance of a witness at a deposition or hearing, or the party at whose request a witness appears at a deposition or hearing, must pay the witness fees described in this section.

(b) *Amount.* Except for an employee of the agency who appears at the direction of the agency, a witness who appears at a deposition or hearing is entitled to the same fees and mileage expenses as are paid to a witness in a court of the United States in comparable circumstances.

### § 1503.651 Record.

(a) *Exclusive record.* The request for hearing, complaint, answer, transcript of all testimony in the hearing, all exhibits received into evidence, and all motions, responses to motions, applications, requests, and rulings will constitute the exclusive record for decision of the proceedings and the basis for the issuance of any orders in the proceeding.

(b) *Examination and copying of record.*

(1) *Generally.* Any person interested in reviewing or obtaining a copy of a record may do so only by submitting a Freedom of Information Act (FOIA) request under 5 U.S.C. 552, *et seq.*, 49 CFR part 7, and any applicable DHS regulations. Portions of the record may be exempt from disclosure pursuant to FOIA.